Mamat bin Hassan & Anor v Siti Khatijah bte Awang Hamat & Ors

HIGH COURT (KOTA BHARU) — ORIGINATING MOTION NO 25–13–1996
NIK HASHIM JC
29 AUGUST 1996

Civil Procedure *— Time — Appeal — Extension of time to file notice of appeal — Appeal from decision of collector of small estates — Jurisdiction of court to extend time — Rules of the High Court 1980 O 3 r 5(1) & O 55 r 13(2) — Small Estates Distribution Act 1955 ss 29 & 30 — Small Estates (Distribution) Regulations 1955 reg 10(1)(c)*

The plaintiffs applied for an extension of time to file a notice of appeal against the order of the collector of small estates made on 31 January 1982. The collector had made the order of distribution by virtue of his powers under s 13 of the Small Estates (Distribution) Act 1955 ('the Act'). According to the plaintiff, he was unaware of the collector's decision until 1994. Counsel for the plaintiff contended that the application was based on O 55 r 13(2) of the Rules of the High Court 1980 ('the RHC 1980') and that the court had powers under O 3 r 5(1) of the RHC 1980 to extend the time to file the said notice of appeal. The issue was whether the court had such powers to do so in view of the fact that the rules pertaining to appeals under the Act were specially provided for under the Small Estates (Distribution) Regulations 1955 ('the Regulations') made pursuant to s 30 of the Act. According to reg 10(1)(c) of the Regulations, a notice of appeal had to be lodged within 14 days from the date wherein the decision of the collector was announced, whereas there is nothing in the Regulations giving the High Court power to extend the 14-day period limited for the appeal.

Held, dismissing the application:

(1) Under O 3 r 5(1) of the RHC, the court has the power to extend or abridge the time to file a notice of appeal only if the right of appeal is provided for by the RHC 1980. However the court is not empowered under O 3 r 5(1) of the RHC to extend the time limited by any other written law (see p 532D).

(2) Under the Act, the right of appeal is provided for under s 29. Since the time limited for appeal and its procedure are provided for specially by the rules made under s 30 of the Act, the procedure in a civil appeal from a sessions court as referred to under s 29(2) of the Act, which includes O 55 r 13(2) of the RHC), is not applicable in this case (see p 532E–G).

(3) The Regulations do not contain any provision of any sort giving the court power to extend the appeal period of 14 days. The period of limitation prescribed by reg 10(1)(c) of the Regulations is a period of limitation which gives a person aggrieved by an

order of the collector, the right to appeal within 14 days after the decision is pronounced. The appeal period cannot be extended. That being so, the High Court has no power to extend the prescribed 14-day period as provided for under the Regulations (see p 533E–G); *Lee Lee Cheng v Seow Peng Kwang* [1960] MLJ 1 and *Mohd Nadir bin A Syed Ahamed v Zubaidi bin Abdul Hamid* [1994] 2 MLJ 159 followed.

[Bahasa Malaysia summary

Plaintif-plaintif telah memohon suatu lanjutan masa untuk memfailkan satu notis rayuan terhadap perintah pemungut hasil pusaka kecil yang dibuat pada 31 Januari 1982. Pemungut telah membuat perintah pembahagian tersebut berdasarkan kuasanya di bawah s 13 Akta Harta Pusaka Kecil (Pembahagian) 1955 ('Akta itu'). Menurut plaintif dia telah tidak sedar akan keputusan pemungut sehingga 1994. Peguamcara bagi pihak plaintif menghujahkan bahawa permohonan itu dibuat berdasarkan A 55 k 13(2) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT 1980') dan bahawa mahkamah mempunyai kuasa di bawah A 3 k 5(1) KMT 1980 untuk melanjutkan masa untuk memfailkan notis rayuan tersebut. Persoalannya adalah sama ada mahkamah mempunyai kuasa untuk berbuat demikian memandangkan bahawa kaedah-kaedah berkenaan dengan rayuan di bawah Akta itu adalah diperuntukan dengan khususnya dalam Peraturan-Peraturan Harta Pusaka Kecil (Pembahagian) 1955 ('Peraturan-Peraturan tersebut') yang dibuat mengikut s 30 Akta itu. Menurut peraturan 10(1)(c) Peraturan-Peraturan tersebut, notis rayuan mesti difailkan dalam tempoh 14 hari dari tarikh keputusan pemungut diisytiharkan, padahal tidak ada sebarang peruntukan yang memberikan Mahkamah Tinggi kuasa untuk melanjutkan tempoh masa 14 hari yang dihadkan untuk tujuan rayuan.

Diputuskan, menolak permohonan tersebut:

(1) Di bawah A 3 k 5(1) KMT, mahkamah mempunyai kuasa untuk melanjutkan ataupun memendekkan masa untuk memfailkan notis rayuan hanya jikalau hak rayuan tersebut diperuntukkan di bawah KMT 1980. Walau bagaimanapun mahkamah adalah tidak berkuasa di bawah A 3 k 5(1) KMT untuk melanjutkan masa yang dihadkan oleh undang-undang bertulis yang lain (lihat ms 532D).

(2) Di bawah Akta itu, hak rayuan diperuntukkan di bawah s 29. Memandangkan yang masa yang dihadkan untuk rayuan dan prosedurnya diperuntukkan secara khusus oleh kaedah-kaedah yang dibuat di bawah s 30 Akta itu, prosedur dalam satu rayuan sivil dari mahkamah sesyen seperti yang dirujuk di bawah s 29(2) Akta itu, termasuk A 55 k 13(2) KMT, tidak terpakai dalam kes ini (lihat ms 532E–G).

(3) Peraturan-Peraturan tersebut tidak mengandungi sebarang peruntukan yang memberikan mahkamah kuasa untuk melanjutkan tempoh masa rayuan 14 hari itu. Tempoh had masa yang diperuntukkan oleh peraturan 10(1)(c) Peraturan-Peraturan tersebut adalah tempoh had masa yang memberikan orang yang terkilan oleh perintah pemungut, hak untuk merayu dalam tempoh masa 14 hari setelah keputusan itu diisytiharkan. Tempoh masa rayuan tidak boleh dilanjutkan. Maka Mahkamah Tinggi tidak mempunyai kuasa untuk melanjutkan tempoh masa 14 hari yang diperuntukkan di bawah Peraturan-Peraturan tersebut (lihat ms 533E–G); *Lee Lee Cheng v Seow Peng Kwang* [1960] MLJ 1 dan *Mohd Nadir bin A Syed Ahamed v Zubaidi bin Abdul Hamid* [1994] 2 MLJ 159 diikut.]

Notes

For cases on extension of time to appeal, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 3547–3561.

Cases referred to

Lee Lee Cheng v Seow Peng Kwang [1960] MLJ 1
Mohd Nadir bin A Syed Ahamed v Zubaidi bin Abdul Hamid [1994] 2 MLJ 159

Legislation referred to

National Land Code 1965 s 418
Small Estates (Distribution) Act 1955 ss 13, 29(2), 30
Small Estates (Distribution) Regulations 1955 reg 10(1)(a), (b), (c)
Rules of the High Court 1980 O 3 r 5(1), O 55 r 13(2)

Ariyani bte Abd Hamid (*Apandi Ali & Co*) for the plaintiffs.
Wan Mahadzir bin Wan Daud (*Yusof Nor & Co*) for the fourth defendant.
Mohd Dusuki bin Hj Mokhtar (Federal Counsel) for the fifth defendant.

Cur Adv Vult

Nik Hashim JC: The plaintiffs applied for an extension of time under O 3 r 5(1) of the Rules of the High Court 1980 ('the RHC 1980') to file a notice of appeal against the order of the collector of small estates made on 31 January 1982. The application was supported by an affidavit of the plaintiff, Mamat bin Hassan, on the ground that he was entitled to the estate of the deceased according to the 'faraid' and that he was unaware of the collector's decision until 1994.

His explanation for the delay in making the application was that he had been staying in Terengganu ever since 1967.

The respondents objected to the application with the affidavits in support.

On being questioned by the court on which law her application was based, Puan Ariyani bte Abd Hamid, learned counsel for the plaintiff, replied that her application was based on O 55 r 13(2) of the RHC 1980 and such being the case, she submitted that the court has power under O 3 r 5(1) of the RHC 1980 to extend time.

Order 3 r 5(1) of the RHC 1980 provides:

> The court may, on such terms as it thinks just, by order, extend or abridge the period within which a person is required or authorized by these rules or by any judgment, order or directions to do any act in any proceedings.

Whereas O 55 r 13(2) of the RHC 1980 states:

> *Unless otherwise provided by any written law*, such appeal shall be made within one month from the date on which the decision was given or the date on which such decision was notified to the person appealing, whichever is the later date. [Emphasis added.]

From the above stated provisions it would appear that under O 3 r 5(1) of the RHC 1980, the court has power to extend or abridge time to file a notice of appeal only if the right of appeal is provided for by the RHC 1980. In other words, the court is not empowered under O 3 r 5(1) of the RHC 1980 to extend the time limited by any other written law.

In this case, the collector had made the order of distribution by virtue of his powers under s 13 of the Small Estates (Distribution) Act 1955 ('the Act'). Under the Act, the right of appeal is provided for under s 29, which states:

> (1) ... any person aggrieved by any order, decision or act made or done by a collector under this Act may appeal to the High Court: ...
>
> (2) The time limited for appeal and the procedure in every such appeal shall unless otherwise provided by the rules made under s 30, conform to the time limited for and the procedure in a civil appeal from a sessions court, with such variations as may be necessary and the same fees shall be payable.

Since the time limited for appeal and its procedure are provided for specially by the rules made under s 30 of the Act, I hold that the procedure in a civil appeal from a sessions court as referred to under s 29(2) of the Act is not applicable in this case. The rules pertaining to appeals under the Act are provided for under the Small Estates (Distribution) Regulations 1955 ('the Regulations').

Regulation 10 of the Regulations states:

> (l)(a) Appeals to the High Court shall be brought by giving notice of appeal in Form K2.
>
> (b) An appellant may appeal from the whole or any part of a decision (which expression shall, in these regulations, mean any order, decision or act made or done by a collector) and the notice of appeal shall state whether the whole or part only, and what part, of the decision is appealed against.
>
> (c) The notice of appeal shall be instituted and filed in the proceedings before the collector and shall be filed in the collector's office within 14 days from the day on which the decision appealed against was pronounced ... .

It is significant to note that there is nothing in the Regulations giving the High Court power to extend the 14-day period limited for the appeal.

In deciding this case, I came across two decided cases.

In *Lee Lee Cheng v Seow Peng Kwang* [1960] MLJ 1 there was an application for an order that the six-month period prescribed by s 8(3)(b) of the Civil Law Ordinance 1956 be extended. The trial judge (Syed Sheh Barakbah J as he then was) held that the court had no power to extend the period of time prescribed by the Ordinance and held that the plaintiffs alleged cause of action was barred by it. On appeal, the Court of Appeal in dismissing the appeal held that the period of limitation prescribed by s 8(3)(b) was a period of limitation which stated that the Ordinance itself contains no provision giving the court power to extend that period.

The principle in *Lee Lee Cheng v Seow Peng Kwang* was later followed in *Mohd Nadir bin A Syed Ahamed v Zubaidi bin Abdul Hamid* [1994] 2 MLJ 159. In the latter case, KC Vohrah J ruled that an aggrieved person under s 418 National Land Code 1965 is given a substantive right to appeal but that the right has to be exercised within three months of the decision being communicated to him, and that the High Court has no power to extend the appeal period prescribed in the section and as such, the application for the extension of time was dismissed with costs.

In my view, there is no difference in principle between the two above cases and the present case. The Regulations likewise do not contain any provision of any sort giving the court power to extend the appeal period of 14 days. This period of limitation prescribed by reg 10(1)(c) of the Regulations is a period of limitation which gives a person aggrieved by an order of the collector, the right to appeal within 14 days after the decision is pronounced. The appeal period cannot be extended. That being so, I rule that the High Court has no power to extend the prescribed 14-day period as provided for under Regulations. In the event, the application for the extension of time is therefore dismissed with costs.

Application dismissed.

Reported by Lew Chee Seong